IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

RCRev..No. 321 of 2005

RCA.3/2003 of RENT CONTROL APPELLANT AUTHORITY, KOZHIKODE
RCP.78/2000 of RENT CONTORL COURT, QUILANDY
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PETITIONER/APPELLANT/RESPONDENT:

VADAKKACHAMANKANDY CHANDRAN,
S/O. MANDANKUTTY, THALAKULATHUR AMSOM
AND DESOM, KOZHIKODE TALUK.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

RESPONDENTS/RESPONDENTS/PETITIONERS:

1. PUTHUKUDI SAJI, S/O. MOOTHARAN,
ELATHUR AMSOM DESOM, KOZHIKODE TALUK.

2. EDAVALATH NARAYANAN, S/O. PERAVAN
VYDIAR, ATHOLI VILLAGE, KONGANNUR,
DESOM, KOYILANDY.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 04/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No. 321 of 2005

ORDER

Balachandran, J.

The tenant in R.C.P.No.78/00 on the file of the Rent Control Court, Koyilandy is the revision petitioner. Petition for eviction was filed against him by the respondents under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act') on the allegation that the building was let out to him by the second respondent on 1.4.1993 on an agreed daily rent of Rs.8/-, which was later increased to Rs.11/- per day; that thereafter the second respondent assigned his rights in favour of the first respondent on 5.12.1998 under Exhibit A2; that the first respondent, who was in Gulf has returned from there in 1999 and that he is in bona fide need of the scheduled building for conducting stationery business. It was also alleged, inter

alia, that the tenant is in possession of Room No.2/447 on the western side of the scheduled room and that several other buildings are also available in the locality for the petitioner/tenant to shift his business. The Rent Control Court found that the rents are in arrears from 5.12.1998 at the rate of Rs.11/- per day and that deposit of Rs.9,000/- made by the petitioner in court will not satisfy the rents in arrears with interest, cost, etc. It was also found that the first respondent bona fide needs the scheduled building for conduct of stationery business. Hence, eviction was ordered both under Sections 11(2)(b) and 11(3) of the Act.

2. The petitioner/tenant challenged the order of eviction passed under Section 11(3) of the Act in R.C.A.No.3/03 before the Rent Control Appellate Authority, Kozhikode. The appellate authority confirmed the order of eviction concurring with the findings of the Rent Control Court. It was also found that the bakery business conducted in the

scheduled room is not the main source of livelihood for the petitioner/tenant, as he is conducting the same business in the adjacent room bearing Door No.2/447 as well. Contentions are advanced by the learned counsel for the petitioner challenging the findings concurrently entered into by the authorities below. The first respondent, who has purchased the scheduled building from the second respondent, on his return from Gulf in 1999, was found concurrently by the authorities below to be in bona fide need of the scheduled building for him to conduct stationery business, as claimed by him. The concurrent findings of fact so entered into by the authorities below do not deserve to be interfered with in revision by this Court.

3. We are convinced, on going through the findings entered into by the authorities below, that there is no reason to take a different view than that was arrived at by the authorities below as regards bona fide need advanced by the first

respondent and that the findings of the authorities below are legal and proper. The finding that the petitioner/tenant is in possession of Room No.2/447 on the western side of the scheduled building for conducting the same business also is based on evidence and does not require to be interfered with. It was also found that there are other buildings in the locality for the petitioner/tenant to shift his business. In the circumstances, findings of the authorities below that the petitioner/tenant is not entitled to protection under the second proviso to Section 11(3) of the Act is also legal and proper and does not deserve to be interfered with in revision. This revision, in the circumstances, is devoid of merit and deserves to be dismissed.

In the result, we dismiss this Rent Control Revision. At the same time, we grant the petitioner/tenant one month's time to surrender vacant possession of the scheduled building to the

first respondent/landlord. The building shall be surrendered to the first respondent/landlord positively on or before 4.7.2007. In case of failure, he shall be liable to be evicted by due process of law, in execution of the order of eviction passed against him.

(J.B.Koshy, Judge)

4th June, 2007

(K.P.Balachandran, Judge)

tkv